

**BEFORE THE
RESPIRATORY CARE BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA**

In the Matter of the Accusation Against:

VICKI L. SIMON aka VICKI NUNEZ
1255 Circle Avenue, Unit A
Seaside, CA 93955

Case No.: 1H 2008 258

OAH No.: 2008100743

DECISION AND ORDER

The attached proposed Decision of the Administrative Law Judge is hereby adopted by the Respiratory Care Board of California, Department of Consumer Affairs, as its Decision in the above entitled matter.

This Decision shall become effective on January 21, 2009.

It is so ORDERED January 14, 2009

Original signed by:

LARRY L. RENNER, BS, RRT, RCP, RPFT
PRESIDENT, RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

BEFORE THE
RESPIRATORY CARE BOARD
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of the Accusation Against:

VICKI L. SIMON
aka VICKI NUNEZ
Seaside, California

Respiratory Care Practitioner License No. 23198,

Respondent.

Case No. 1H 2008 258

OAH No. 2008100743

PROPOSED DECISION

Administrative Law Judge David L. Benjamin, State of California, Office of Administrative Hearings, heard this matter in Oakland, California, on November 21, 2008.

Senior Legal Assistant Catherine E. Santillan represented complainant Stephanie Nunez, Executive Director of the Respiratory Care Board of California, Department of Consumer Affairs.

Respondent Vicki L. Simon appeared and represented herself.

The matter was submitted on November 21, 2008.

FACTUAL FINDINGS

1. On September 5, 2003, the Respiratory Care Board (board) issued Respiratory Care Practitioner License Number 23198 to respondent Vicki L. Nunez. (On August 7, 2008, respondent changed her name with the board to Vicki L. Simon.) Complainant Stephanie Nunez, acting in her official capacity as the Executive Officer of the board, filed the accusation against respondent. Respondent filed a notice of defense. The accusation alleges that respondent illegally possessed and used controlled substances, that she obtained the controlled substances dishonestly from her employer, and that in doing those things she engaged in unprofessional conduct.

2. On April 21, 2008, respondent was employed as a respiratory therapist at the Community Hospital of the Monterey Peninsula (CHOMP). She was working the day shift.

Between 9:00 a.m. and 10:00 a.m. that morning, respondent approached Marcella Dolhun, a registered nurse, as Dolhun was taking medications from the Pyxis.¹ Respondent told Dolhun that her password was not working and asked Dolhun if she could leave the drawer open when she was done and let respondent remove the medications she needed under Dolhun's password. Respondent's statement that her password was not working was not true: as a registered nurse, Dolhun's password gave her access to controlled substances that respondent, as a respiratory technician, did not have. Dolhun left the drawer open as respondent had requested. After Dolhun walked away, respondent took a package of 10 Vicodin² tablets from the Pyxis and then logged off. Respondent ingested two of the Vicodin tablets within 30 minutes.

The supervisor of the unit, Lauren Rogalsky, noticed respondent standing next to Dolhun and thought that respondent was spending an unusual amount of time at the Pyxis. When respondent left, she immediately ran a report and found the 10-tablet discrepancy. Rogalsky approached Dolhun, who told her what had occurred. Rogalsky reported the incident to management.

At about 10:15 a.m., Victoria Sciacqua, the Director of Pulmonary Services at CHOMP, asked respondent to come with her to the conference room; respondent complied. With Sciacqua was a representative from human resources and a pharmacist. Sciacqua told respondent she had learned that respondent had taken Vicodin from the Pyxis under a nurse's password. Respondent admitted that she had done so. Asked whether she had ever done the same thing in the past, respondent said that she had, once. Sciacqua asked respondent to empty her pockets and found that respondent only had medications that she was authorized to possess. Sciacqua asked respondent where the Vicodin tablets were, and respondent told her that they were in her locker. They walked to respondent's locker and respondent looked through her bag but could not find them. Respondent then put her hand in the leg pocket of her scrubs and said, "Oh, here they are." Respondent handed Sciacqua all but two of the 10 Vicodin tablets she had taken from the Pyxis, and admitted to Sciacqua that she had already ingested two of the tablets. Respondent was suspended immediately. CHOMP reported respondent's suspension and the reasons for it to the board.

3. At hearing, respondent admitted without qualification the matters set forth in Finding 2. She stated that, in addition to the incident on April 21, 2008, she had taken Vicodin from the Pyxis on one occasion about six months earlier under similar circumstances.

¹ Pyxis is an electronic medication dispensing system.

² "Vicodin" is a brand name for a combination of hydrocodone bitartrate and acetaminophen. Hydrocodone bitartrate is a semisynthetic narcotic analgesic. It is both a Schedule III controlled substance as defined by section 11056, subdivision (e), of the Health and Safety Code, and a dangerous drug as defined by section 4022 of the Business and Professions Code.

4. Respondent stated that on April 21, 2008, when she told Sciacqua that the Vicodin tablets were in her locker, she truly thought that they were there. It was not until she went through her bag that she realized that, after taking the tablets from the Pyxis, she had never gone back to her locker as she intended. Respondent's testimony on this point is credible. When she told Sciacqua that the tablets were in her locker, she had already admitted to diverting the Vicodin tablets and had agreed to go to her locker to retrieve them. It is not probable that, after acknowledging the theft, respondent intended to deceive Sciacqua about where the tablets were.

5. Respondent is 52 years old. She is married with two adult children and three grandchildren. Respondent worked as a secretary for many years and then, at age 41, returned to school to become a respiratory therapist. She was first employed by CHOMP in 2003.

6. Respondent stated that, prior to April 21, 2008, she had been abusing pain medications for at least 20 years. In the four years preceding April 2008 she was taking about six tablets of controlled substances per day on her "best" days, and 15 to 20 on her worst days. In April 2008, respondent took, on average, 10 Soma³ and five to six Vicodin per day. She obtained the medications by going to several different physicians and not disclosing to any of them the prescriptions she had been given by the others. Respondent did not take any medications from CHOMP at any time other than the two instances set forth in Findings 2 and 3, and never took medications from patients.

7. In the period 2006 to 2008, respondent had problems on and off the job, at least some of which were related to substance abuse.

Respondent's performance appraisal for the period November 2006 to November 2007 found that her work was deficient in three respects. During that year, she was placed on disciplinary probation for excessive unscheduled absences. Respondent was removed from her duties in the Pulmonary Function Testing laboratory after patients and physicians voiced concerns about her competence. And she required additional mentoring in the bronchoscopy suite following physician complaints. (Her work there improved and, after the additional training, there were no further issues.)

On September 21, 2006, respondent was arrested for driving under the influence. Respondent acknowledges that she had taken two Ativan⁴ tablets before her arrest. On March 28, 2007, she was convicted on her plea of no contest of a violation of Vehicle Code section 23103 (reckless driving).

³ Soma, a brand name for carisoprodol, is a dangerous drug under Business and Professions Code section 4022.

⁴ Ativan, a brand name for lorazepam, is a benzodiazepine used to treat anxiety.

8. Before April 2008, respondent had tried on numerous occasions to, in her words, “detox” on her own. She had been trying for several days prior to April 21 but, when she came to work that day, she was shaking and feeling ill and had been up vomiting the night before. She was out of Vicodin and she knew she had to come to work because she was under observation for tardiness and absenteeism. Respondent decided that she needed to “medicate” herself and took the Vicodin out of the Pyxis.

9. After she was suspended on April 21, respondent contacted the employee assistance program and admitted herself to the detoxification ward at CHOMP. She testified that, when she was suspended, the shame and denial she had been feeling for years “all came to a head.” She spent two weeks being detoxified, during which time she was taken off all opiates and benzodiazepines. Respondent then entered Cottonwood de Tucson, a 30-day residential treatment program in Arizona.

Respondent described her experience at Cottonwood as “life changing.” During her treatment she addressed serious issues from her childhood, including sexual abuse. She was diagnosed with several serious physical conditions, including breast cancer, and she was treated for depression and anxiety. Respondent testified that Cottonwood gave her a lot of tools to deal with issues that might arise in her life without harming herself.

The discharge summary prepared by respondent’s counselors at Cottonwood states that her continued recovery “will be dependent upon her willingness to stay connected to a recovery and support community. Should she continue to do this, her prognosis will improve. [H]er prognosis at this point for relapse is moderate.”

10. Respondent returned to the Monterey area after she was released from Cottonwood and, on June 10, 2008, she was admitted to the Intensive Outpatient Alcohol and Drug Program at the CHOMP Recovery Center. In a letter dated July 11, 2008, respondent’s chemical dependency counselor, Khat Rae, wrote that the program requires respondent to (among other things) attend a mood management group for four months, attend a women’s process group for one month, attend 12-step group meetings, maintain contact with her counselor, and abstain from the use of alcohol and drugs. Rae stated that respondent is also subject to random urinalysis, which to that date had been negative. Rae opined that respondent’s prognosis is “fair to good if she continues to follow through with recommendations for ongoing recovery.”

Respondent completed one month of intensive outpatient therapy on July 11, 2008, and entered the one-year aftercare program on July 17, 2008. In a letter dated November 18, 2008, caseworker Maurine Moody reports that respondent has complied with the requirements of the program and that she “has worked hard on her recovery and is doing well.”

Respondent typically attends five meetings per week, including AA or NA meetings and aftercare groups at CHOMP. She is working the 12 steps with her sponsor and is

currently on step four. Respondent has been “sober” for seven months and has found happiness in sobriety that she never had before.

Sydney L. Harper, Josie Rosales, Rocky Romano, and Jill Curtis, RN, know respondent from the CHOMP recovery program and each of them wrote a letter in support of respondent. (Curtis also works with respondent at CHOMP.) Their letters praise respondent for taking her recovery seriously, for her honesty in meetings, and for her ability to instill hope and courage in others.

11. Respondent’s physician released her to return to work on October 1, 2008. Several management officials at CHOMP, including Sciacqua, deliberated on whether to allow respondent to return to work. Ultimately, Sciacqua stated, they decided to allow respondent to return to work based largely upon Sciacqua’s judgment. In Sciacqua’s view, respondent had been forthright with the hospital and had taken the necessary steps to address her substance abuse. Sciacqua also felt that respondent was a strong patient advocate with a genuine care for patients and a competent therapist. CHOMP therefore decided to let respondent return to work under a “last chance” agreement. In that agreement, respondent agreed to provide CHOMP with a release as to all her medical records, to provide proof of compliance with her rehabilitation program, to submit to random drug testing for one year, and to submit to testing within 30 minutes of any request. Respondent completed a one-week suspension beginning October 1, and then returned to her usual duties.

Sciacqua stated that respondent has performed very well since she returned to work. Sciacqua has no complaints about respondent’s performance and she has not received any from others. At the time of this hearing (November 21), respondent had not yet been tested for drugs.

Respondent testified that it is very important to her to keep her job at CHOMP. She is grateful to Sciacqua for her support, and she is thankful that the hospital has been honest and forthright with her.

Several of respondent’s co-workers, Denise M. Campbell, RCP, RRT, Robert Roth, RRT, and Teresa Campbell, NPS, BS, RRT, wrote letters in support of respondent. These co-workers state that respondent has been punctual and reliable since she returned to work in October 2008, that she is hard-working and dependable, and that she is clear-headed and is providing excellent care to her patients. Denise Campbell feels that respondent was a good therapist before April 2008, but that she is “even better” since seeking treatment for her substance abuse.

12. At hearing, Sciacqua provided a candid assessment of respondent’s strengths and weaknesses as a therapist. She testified in a neutral manner, without any apparent bias in favor of respondent or against her. It appears that Sciacqua takes her supervisory responsibilities seriously. She acted promptly to investigate the discrepancy in the Pyxis and to suspend respondent, she fulfilled her duty to the board as a mandated reporter, and she allowed respondent to return to work only under an agreement that provides for close

monitoring of respondent's use of drugs. Great weight is accorded to Sciacqua's testimony, and to her judgment regarding respondent's capacity to practice safely.

13. Respondent's license was disciplined on May 21, 2007, based upon her March 2007 conviction for reckless driving. She was issued Citation and Fine No. C-07-0270 and fined \$250.

14. The board has incurred costs of \$2,575.50 in its investigation and prosecution of this case. In the absence of any evidence to the contrary, these costs are found to be reasonable.

LEGAL CONCLUSIONS

1. First cause for discipline. The board may suspend or revoke the license of any respiratory care practitioner who "obtained or possessed in violation of law, or . . . administered to . . . herself, any controlled substance as defined in . . . the Health and Safety Code, or any dangerous drug as defined in . . . this code." (Bus. & Prof. Code, § 3750.5, subd. (a).)⁵ The board may take disciplinary action against any respiratory care practitioner who "used any controlled substance . . . or any dangerous drug." (§ 3750.5, subd. (b).) The board may take disciplinary action against a licensee who violates any provision of the Respiratory Care Practice Act (§ 3700 et seq.). (§ 3755; Cal. Code Regs., tit. 16, § 1399.370, subd. (a).) Respondent illegally obtained a package of 10 Vicodin tablets from the Pyxis at CHOMP and ingested two of the tablets. (Findings 2 and 3.) Cause for discipline exists under section 3750.5, subdivisions (a) and (b).

2. Second cause for discipline. The board may take disciplinary action against any respiratory care practitioner who committed a dishonest act that was substantially related to the qualifications, functions or duties of a licensee. (§ 3750, subd. (g).) Respondent committed a dishonest act when she took, for her own use, a package of 10 Vicodin tablets from the Pyxis at CHOMP. (Findings 2 and 3.) Cause for discipline exists under section 3750, subdivision (g).

3. Third cause for discipline. The board may take disciplinary action against any respiratory care practitioner who engaged in unprofessional conduct. (§ 3755.) The term "unprofessional conduct" includes commission of a dishonest act. Cause for discipline exists by reason of the matters set forth in Findings 2 and 3 and Legal Conclusion 2.

4. Section 3753.5, subdivision (a), provides that any order issued in a disciplinary proceeding may direct the licensee to pay the board "a sum not to exceed the costs of the investigation and prosecution of the case." Cause exists to order respondent to pay the board the sum of \$2,575.50. (Finding 14.)

⁵ All statutory references are to the Business and Professions Code.

5. Respondent's long history of substance abuse is the principal concern in determining the appropriate level of license discipline. She was dishonest when she stole Vicodin from her employer on two different occasions, but her dishonesty with her employers, and her doctors, appears to have been the product of her untreated substance abuse, rather than fundamental dishonesty. Respondent sought treatment for the first time in April 2008. It is too early to conclude that respondent is free of her chronic substance abuse, but the evidence establishes that respondent's recovery is promising. She has not used drugs for about seven months. She has complied fully with the requirements of her recovery program and, by all accounts, she is motivated to maintain her sobriety. Since returning to work in October 2008, respondent has performed well. Respondent's employer is fully aware of her substance abuse history and will closely monitor her to detect any relapse. Under these circumstances, it would not be contrary to the public interest to allow respondent to practice under a stayed revocation, subject to conditions. Respondent will be required, among other conditions, to comply with her last chance agreement with CHOMP, to successfully complete her one-year aftercare program, to abstain from the use of alcohol and drugs, and to submit to random testing.

ORDER

Respiratory Care License Number 23198 to respondent Vicki L. Simon is revoked. However, the revocation is stayed and respondent is placed on probation for five years on the following conditions:

1. **OBEY ALL LAWS.** Respondent shall obey all laws, whether federal, state, or local. Respondent shall also obey all regulations governing the practice of respiratory care in California.

Respondent shall notify the board in writing within 14 days of any incident resulting in her arrest, or charges filed against, or a citation issued against, respondent.

2. **COMPLY WITH LAST CHANCE AGREEMENT WITH CHOMP.**
Respondent shall comply with the terms of her last chance agreement with CHOMP. Any violation of that agreement by respondent shall constitute a violation of probation.
3. **QUARTERLY REPORTS.** Respondent shall file quarterly reports of compliance under penalty of perjury, on forms to be provided, to the probation monitor assigned by the board. Omission or falsification in any manner of any information on these reports shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against respondent's respiratory care practitioner license.

Quarterly report forms will be provided by the board. Respondent is responsible for contacting the board to obtain additional forms if needed.

Quarterly reports are due for each year of probation and the entire length of probation as follows:

For the period covering January 1st through March 31st, reports are to be completed and submitted between April 1st and April 7th.

For the period covering April 1st through June 30th, reports are to be completed and submitted between July 1st and July 7th.

For the period covering July 1st through September 30th, reports are to be completed and submitted between October 1st and October 7th.

For the period covering October 1st through December 31st, reports are to be completed and submitted between January 1st and January 7th.

Failure to submit complete and timely reports shall constitute a violation of probation.

4. **PROBATION MONITORING PROGRAM.** Respondent shall comply with requirements of the board appointed probation monitoring program, and shall, upon reasonable request, report to or appear to a local venue as directed.

Respondent shall claim all certified mail issued by the board, respond to all notices of reasonable requests timely, and submit Annual Reports, Identification Update reports or other reports similar in nature, as requested and directed by the board or its representative.

Respondent is encouraged to contact the board's Probation Program at any time she has a question or concern regarding her terms and conditions of probation.

Failure to appear for any scheduled meeting or examination, or cooperate with the requirements of the program, including timely submission of requested information, shall constitute a violation of probation and will result in the filing of an accusation and/or a petition to revoke probation against respondent's respiratory care practitioner license.

5. **PROBATION MONITORING COSTS.** All costs incurred for probation monitoring during the entire probation shall be paid by respondent. The monthly cost may be adjusted as expenses are reduced or increased. Respondent's failure to comply with all terms and conditions may also cause this amount to be increased.

All payments for costs are to be sent directly to the board and must be received by the date(s) specified. (Periods of tolling will not toll the probation monitoring costs incurred.)

If respondent is unable to submit costs for any month, she shall be required, instead to submit an explanation of why she is unable to submit the costs, and the date(s) she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the board from pursuing further disciplinary action. However, respondent understands that by providing evidence and supporting documentation of financial hardship it may delay further disciplinary action.

In addition to any other disciplinary action taken by the board, an unrestricted license will not be issued at the end of the probationary period and the respiratory care practitioner license will not be renewed, until such time all probation monitoring costs have been paid.

The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the board for costs incurred.

6. **WORK SCHEDULES.** Respondent shall be required to submit to the probation monitor work schedules on a weekly/monthly basis for the length of probation. Respondent shall ensure the board has a copy of her current work schedule at all times for each place of employment.

Failure to submit current work schedules on a continuous basis, shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against respondent's respiratory care practitioner license.

7. **BIOLOGICAL FLUID TESTING.** Respondent, at her expense, shall participate in random testing, including but not limited to biological fluid testing (i.e. urine, blood, saliva), breathalyzer, hair follicle testing, or any drug screening program approved by the board. Test costs range from \$21 to \$200 each. The length of time shall be for the entire probation period. The frequency and location of testing will be determined by the board.

At all times respondent shall fully cooperate with the board or any of its representatives, and shall, when directed, appear for testing as requested and submit to such tests and samples for the detection of alcohol, narcotics, hypnotic, dangerous drugs or other controlled substances.

If respondent is unable to provide a specimen in a reasonable amount of time from the request, while at the work site, respondent understands that any board representative may request from the supervisor, manager or director on duty to observe respondent in a manner that does not interrupt or jeopardize patient care in any manner until such time respondent provides a specimen acceptable to the board.

Failure to submit to testing or appear as requested by any board representative for testing, as directed shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against respondent's respiratory care practitioner license.

8. **ABSTENTION FROM USE OF MOOD ALTERING SUBSTANCES.**

Respondent shall completely abstain from the possession or use of alcohol, any and all other mood altering drugs, substances and their associated paraphernalia, except when the drugs are lawfully prescribed by a licensed practitioner as part of a documented medical treatment.

Respondent shall execute a release authorizing the release of pharmacy and prescribing records as well as physical and mental health medical records. Respondent shall also provide information of treating physicians, counselors or any other treating professional as requested by the board.

Respondent shall ensure that she is not in the presence of or in the same physical location as individuals who are using illegal substances, even if respondent is not personally ingesting the drug(s).

Any positive result that registers over the established laboratory cutoff level shall constitute a violation of probation and shall result in the filing of an accusation and/or a petition to revoke probation against respondent's respiratory care practitioner license.

Respondent also understands and agrees that any positive result that registers over the established laboratory cutoff level shall be reported to each of respondent's employers.

9. **ALCOHOL AND DRUG TREATMENT.** Respondent shall successfully complete the one-year aftercare program at the CIOMP Recovery Center, Intensive Outpatient Alcohol and Drug Program. The program director, psychiatrist or psychologist shall confirm that respondent has complied with the requirement of this decision and shall notify the board immediately if he/she believes the respondent cannot safely practice. Respondent shall execute a release authorizing divulgence of this information to the board.

Respondent shall inform the program director, psychiatrist or psychologist, of her probationary status with the board, and shall cause that individual to submit monthly reports to the board providing information concerning respondent's progress and prognosis. Such reports shall include results of biological fluid testing. Positive results shall be reported immediately to the board and shall be used in administrative discipline.

10. **EMPLOYMENT REQUIREMENT.** Respondent shall be employed a minimum of 24 hours per week as a respiratory care practitioner for a minimum of two-thirds of her probation period.

Respondent may substitute successful completion of a minimum of thirty (30) additional continuing education hours, beyond that which is required for license renewal, for each eight months of employment required. Respondent shall submit proof to the board of successful completion of all continuing education requirements. Respondent is responsible for paying all costs associated with fulfilling this term and condition of probation.

11. **NOTICE TO EMPLOYER.** Respondent shall be required to inform her employer, and each subsequent employer during the probation period, of the discipline imposed by this decision by providing her supervisor and director and all subsequent supervisors and directors with a copy of the decision and order, and the accusation in this matter prior to the beginning of or returning to employment or within 14 days from each change in a supervisor or director.

If respondent is employed by or through a registry (and is not restricted from working for a registry), respondent shall make each hospital or establishment to which she is sent aware of the discipline imposed by this decision by providing her direct supervisor and administrator at each hospital or establishment with a copy of this decision, and the accusation in this matter prior to the beginning of employment. This must be done each time there is a change in supervisors or administrators.

The employer will then inform the board, in writing, that he or she is aware of the discipline, on forms to be provided to respondent. Respondent is responsible for contacting the board to obtain additional forms if needed. All reports completed by the employer must be submitted from the employer directly to the board.

Respondent shall execute a release authorizing the board or any of its representatives to review and obtain copies of all employment records and discuss and inquire of the probationary status with any of respondent's supervisors or directors.

12. **CHANGES OF EMPLOYMENT OR RESIDENCE.** Respondent shall notify the board, and appointed probation monitor, in writing, of any and all changes of employment, location, and address within 14 days of such change. This includes but is not limited to applying for employment, termination or resignation from employment, change in employment status, and change in supervisors, administrators or directors.

Respondent shall also notify her probation monitor AND the board IN WRITING of any changes of residence or mailing address within 14 days. Post office boxes are accepted for mailing purposes, however respondent must also provide her physical residence address as well.

13. **COST RECOVERY.** Respondent shall pay to the board a sum not to exceed the costs of the investigation and prosecution of this case. That sum shall be \$2,575.50 and shall be paid in full directly to the board, in equal quarterly payments, within 12 months from the effective date of this decision. Cost recovery will not be tolled.

If respondent is unable to submit costs timely, she shall be required, instead to submit an explanation of why she is unable to submit these costs in part or in entirety, and the date(s) she will be able to submit the costs including payment amount(s). Supporting documentation and evidence of why respondent is unable to make such payment(s) must accompany this submission.

Respondent understands that failure to submit costs timely is a violation of probation and submission of evidence demonstrating financial hardship does not preclude the board from pursuing further disciplinary action. However, respondent understands that by providing evidence and supporting documentation of financial hardship may delay further disciplinary action.

Consideration to financial hardship will not be given should respondent violate this term and condition, unless an unexpected AND unavoidable hardship is established from the date of this order to the date payment(s) is due.

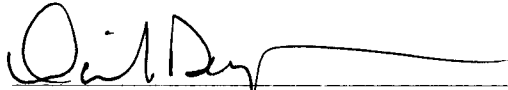
The filing of bankruptcy by respondent shall not relieve respondent of her responsibility to reimburse the board for these costs.

14. **TOLLING FOR OUT-OF-STATE RESIDENCE OR PRACTICE.** Periods of residency or practice outside California, whether the periods of residency or practice are temporary or permanent, will toll the probation period but will not toll the cost recovery requirement, nor the probation monitoring costs incurred. Travel out of California for more than 30 days must be reported to the board in writing prior to departure. Respondent shall notify the board, in writing, within 14 days, upon her return to California and prior to the commencement

of any employment where representation as a respiratory care practitioner is/was provided.

15. **VALID LICENSE STATUS.** Respondent shall maintain a current, active and valid license for the length of the probation period. Failure to pay all fees and meet CE requirements prior to her license expiration date shall constitute a violation of probation.
16. **VIOLATION OF PROBATION.** If respondent violates any term of the probation in any respect, the board, after giving respondent notice and the opportunity to be heard, may revoke probation and carry out the disciplinary order that was stayed. If a petition to revoke probation is filed against respondent during probation, the board shall have continuing jurisdiction and the period of probation shall be extended until the matter is final. No petition for modification of penalty shall be considered while there is an accusation or petition to revoke probation or other penalty pending against respondent.
17. **COMPLETION OF PROBATION.** Upon successful completion of probation, respondent's license shall be fully restored.

DATED: December 19, 2008



DAVID L. BENJAMIN
Administrative Law Judge
Office of Administrative Hearings